



[4] With regard to the penalty claim the Authority recorded in its determination dated 30 January 2009 (issued under AA29/09):

*[8] By his own admission Mr Keeley has breached the terms of settlement and he is therefore liable under s.149(4) of the Act to a penalty imposed by the Authority. This may be up to \$5,000. The breach may be viewed as a single but continuing one, rather than a series of separate breaches after the 28th of each month when payment was not made.*

[5] As was also recorded, the Authority then adjourned the application for a penalty without making any final determination, to enable the compliance order to be observed by Mr Keeley during the adjournment. The Authority directed:

*[10] Ms Hooton may return to the Authority and ask for penalties in the event of there being any further failure to observe the terms of settlement or any breach of this compliance order.*

[6] The above paragraph does not make it clear that the Authority has no jurisdiction to order payment of a penalty where a party has not observed a compliance order made by it. That remedy is available from the Employment Court, not the Authority. The penalty the Authority is able to impose is for breach of an agreed term of settlement made under s149 of the Act, or for any breach of the employment agreement itself.

[7] Mr Keeley has always admitted since this investigation began that he breached the terms of settlement signed by the mediator in November 2008.

[8] Whereas under the agreement Mr Keeley should have completed payment of the \$7,000 by the end of April 2009, it was not until September 2009 that the final payment was made together with costs and the filing fee awarded of \$270 in total. As final payment had been due on 28 July under the compliance order, he was also in breach of that order.

[9] In September Ms White, advocate for Ms Hooton, drew attention to further alleged breaches of the settlement agreement by Mr Keeley who, it was claimed, had made remarks of a derogatory or disparaging nature against Ms White in public, contrary to an expressed term of the settlement.

[10] Ms White therefore sought to have the adjourned claim for penalty brought on for determination.

[11] Because of the infrequency of Authority investigations held in Taupo the parties agreed that the Authority should determine the penalty claim on the papers.

[12] This is not entirely satisfactory since there are issues of fact, particularly in relation to the derogatory remarks Mr Keeley allegedly made about Ms Hooton in public. He has not admitted or denied making those remarks and the witnesses are not available to be examined by the Authority.

[13] Mr Keeley entered into a settlement agreement which he undertook to comply with in good faith. He failed in that regard and it is therefore a relatively serious breach which, may only be partly excused by economic reasons that apparently affected the ability of Mr Keeley to pay on time. That breach was aggravated by the further failure to make payment by the end of July 2009 under the Authority's order Mr Keeley had consented to.

[14] Mr Keeley completed payment of the \$7,000 and paid costs and the filing fee on the application in mid-September 2009. That much is in his favour.

### **Determination**

[15] I consider that as Mr Keeley failed to meet his undertakings with regard to the timing of payments due to Ms Hooton under the settlement agreement, he is ordered to pay a penalty of \$600 pursuant to s 149 of the Act. I direct that \$300 of that is to be paid by Mr Keeley to Ms Hooton, pursuant to s 136(2).